

Top Ten E-Discovery Cost Savings Tips

1. Develop and implement a comprehensive e-records management program before any litigation is contemplated. It just makes good business sense. *See* Fed. R. Civ. P. 37(e); The Sedona Principles Addressing Electronic Document Production (“The Sedona Principles”), Principle 1; *see generally* The Sedona Guidelines for Managing Information and Records in the Electronic Age.
2. Establish a standard “litigation response” procedure, just as you would have any other business risk mitigation procedure (fire, flood, earthquake, epidemic, etc.). No well-run business should be without it. *See* Fed. R. Civ. P. 37(e), The Sedona Principles, Principle 5; The Sedona Conference Commentary on Legal Holds.
3. Include knowledgeable IT, RM, and business personnel in litigation response planning, conferences, and execution. Effective response is a team effort. *See* The Sedona Principles, Principle 6; The Sedona Conference Commentary on Legal Holds.
4. Focus on data preservation issues early in the case – well before the Rule 26(f) conference. This is a two-way street, for both requesting and responding parties. *See* The Sedona Principles, Principle 3; The Sedona Conference Commentary on Legal Holds.
5. Preserve and review potentially responsive data in native format, if possible. If money must be spent on data conversion, spend it later on the small amount of data most likely to be produced to opposing counsel. *See* The Sedona Principles, Principle 12.
6. Use technology to assist in identification, review, and response. Mutually agreed-upon sampling, de-duplication, and keyword searches are good starting points. *See* The Sedona Principles, Principle 11; The Sedona Conference Best Practices Commentary on Search & Retrieval Methods.
7. Go beyond agreeing with opposing counsel on the form or forms of production, and consider agreeing on a common litigation support platform and the exchange of “standard” objective metadata. *See* Fed. R. Civ. P. 26(f)(3); Fed. R. Civ. P. 34(b); The Sedona Principles, Principle 12.
8. Enter into a “clawback” agreement with opposing counsel to mitigate both parties’ privilege review risks. *See* Fed. R. Civ. P. 26(b)(5); The Sedona Principles, Principle 10.
9. Make specific requests and responses. Nothing wastes more time and energy in discovery than a set of vague, overbroad requests prompting a set of vague, overbroad objections. *See* The Sedona Principles, Principle 4.
10. Cooperate with opposing counsel to develop a “multi-tiered” discovery plan that concentrates first on review and production of relevant data from the most accessible sources, and avoids review and production of data from less accessible sources unless and until it is shown to be necessary. *See* Fed. R. Civ. P. 26(b)(2)(B); The Sedona Principles, Principles 8 and 9.

References are to:

The Sedona Principles Addressing Electronic Document Production, Second Edition
(June, 2007)

The Sedona Guidelines for Managing Information and Records
in The Electronic Age (September 2005)

The Sedona Conference Commentary on Legal Holds, August 2007 Public Comment
Version

The Sedona Conference Best Practices Commentary on Search & Retrieval Methods
(August, 2007)

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